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Supreme Court, U.S.
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No. 96-1816

In The
Supreme Court of the United States
October Term, 1996

ALBERT G. PRODELL, MICHAEL FUCITO, CAROLYN BAIER, NORMAN E. HOLDEN, WILLIAM C. HUDSON, RICHARD STRAND, MARY LOU ABATA, JOY KIRSHENBAUM, PETER VALLELY and JOHN K. DOLLARD, individually and on behalf of all other persons similarly situated, and the SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT,

Petitioners,

against

THE STATE OF NEW YORK and THE TOWN OF BROOKHAVEN,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Question Presented

Is a statute which imposes refund liability upon a school district which collected and spent excessive taxes due to the over assessment of a nuclear powered electrical generating station constitutional?

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History of the Case

On November 7, 1983 Section 3 of the Suffolk County Tax Act was amended New York by the adoption of Chapter 1018 of the Laws of 1983. As amended, Section 3 of the Suffolk County tax act reads, in pertinent part:

> Any final order in a proceeding under Article seven of the real property tax law which orders or directs the correction or striking of an assessment appearing on that portion of a town assessment roll applicable to a school district, shall be binding on such town. Any amount of taxes of such school district at any time collected upon such assessment in excess of the amount which would have been paid had such assessment been made as determined by such order, shall be refunded by the county and shall be charged by the county to such town. Such refund shall not be charged by the town to such school district, except where the assessment subject to such proceeding is applicable to property improved by a nuclear powered electrical generating facility. In such case, the town shall charge such school district any amount of taxes collected by such school district upon such assessment in excess of the amount which would have been paid had such assessment been made as determined by such order.

The petitioners herein have challenged the provisions of Section 3 of the Suffolk County Tax Act which direct the town to charge the school tax refunds to the school district when such refunds arise out of the reduction of an assessment on a nuclear powered electrical generating facility. The petitioners are the

Shoreham Wading River Central School District and individuals who reside within said district. Located within the District is the Shoreham Nuclear Power Station which was constructed by the Long Island Lighting Company and later sold to the Long Island Power Authority.

This case was originally commenced by the petitioners in 1986, however in 1993 the petitioners served an Amended Complaint, which Amended Complaint is the subject of the instant proceedings. In their amended complaint petitioners seek *inter alia:*

> [A] judgement declaring section 3 of the SCTA, as amended by chapter 1018 of the laws of 1983 unconstitutional under the Equal Protection Clause of the United States and New York Constitutions and (ii) an order enjoining the defendants [the State of New York and the Town of Brookhaven] from enforcing the statute.

The Supreme Court found the statute to be unconstitutional, *Prodell v State of New York*, 166 Misc.2d 608, 630 N.Y.S.2d 880 (Albany Cty 1995) but the Appellate Division reversed and dismissed the complaint, holding that the petitioners had failed to meet their burden of proving that the statute is unconstitutional. *Prodell v State of New York*, 222 A.D.2d 178, 645 N.Y.S.2d 589 (Third Dept. 1996). New York's highest court, the Court of Appeals declined to hear the District's appeal *Prodell v State of New York*,____N.Y.2d____ and the District now seeks review in the United States Supreme Court.

The History of School Districts' Liability for Tax Refunds

In New York State, school districts are generally required to refund school district taxes when an assessment is reduced. New York Real Property Tax Law (RPTL) § 726 1. (c). Until 1980, the Suffolk County Tax Act was silent as to the refund of school district taxes, so RPTL § 726 1.(c) was controlling. Historically, towns in Suffolk County did not charge the school district portion of tax refunds back to the districts. In 1980 the Suffolk County Tax Act was amended to relieve school districts of their obligation to pay the school district portion of tax refunds. *See, Matter of Vantage Petroleum v Board of Assessment Review of the Town of Babylon*, 91 A.D.2d 1037, 1038,458 N.Y.S.2d 632, affd 61 N.Y.2d 695, 472 N.Y.S.2d 603, 460 N.E.2d 1088 (Second Dept. 1983). As noted above, the Suffolk County Tax Act was further amended by the enactment of Chapter 1018 of the Laws of 1983 which reinstated school districts' liability for refunding school district taxes upon a finding by the court that a nuclear powered electrical generating station had been over assessed.

ARGUMENT

Section 3 of the Suffolk County Tax Act is Constitutional

The Appellate Division properly held that a challenged statute must be upheld if its classification is rationally related to achieving a legitimate State purpose. As this Court has stated:

> Parties challenging legislation under the Equal Protection Clause cannot prevail so long as "it is evident from all the considerations presented to

> [the legislature], and those of which we may take judicial notice, that the question is at least debatable" *Western & S Ins. Co. v Board of Equalization*, 451 US 648, 677, 101 S.Ct. 2072, 2086 (1981).

The Appellate Division also properly ruled that when the challenged statute is a tax statute the burden on one challenging the statute is "to negate every conceivable basis which might support it". *Prodell v State of New York*, 222 A.D.2d 178, 645 N.Y.S.2d 589 citing *Matter of Cove Hollow Farm v State of N.Y. Tax Comm.* 146 AD2d 49, 539 N.Y.S.2d 127 (Third Dept. 1989). In enacting tax statutes, the legislature has greater freedom than it has in other fields in setting up classifications. *Trump v Chu* 65 N.Y.2d 20, 489 N.Y.S. 2d 455 (1985) *appeal dismissed* 474 U.S. 915 citing *Madden v Kentucky* 309 U.S. 83, 60 S.Ct 406, 80 L.Ed.590 (1940).

The judiciary's reluctance to interfere with state tax systems is based on the premise that without the orderly collection of taxes the states could not function. In explaining the doctrine of comity this Court has stated:

> This Court, even before the enactment of § 1983, recognized the important and sensitive nature of state tax systems and the need for federal court restraint when deciding cases that affect such systems. As Justice Field wrote for the Court only a year before the enactment of § 1983:
> "It is upon taxation that the several states chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered

with as little as possible. *Fair Assessment In Real Estate Assn., Inc v McNary* 454 US 100,102, 70 L Ed 2d 271,272, 102 S Ct 177 (1981) *citing Dows v Chicago,* 11 Wall 108, 110, 20 L Ed 65 (1871)

The same factors that have motivated the Federal Courts to adopt the principle of comity have motivated other courts to exercise judicial restraint generally.[1]

The Court below found that the Legislature had a rational basis to determine that due to their high values, nuclear generating stations created tax havens in the school districts in which they were located. Such districts would be in a better position to repay the excessive taxes they received than districts which did not benefit from the high assessment roll created by a nuclear power station. Such a conclusion was justified by the fact that in the year prior to the enactment of the challenged law the school tax rate within the Shoreham Wading River School District was only $18.84 per $100 of assessed value, compared an average tax rate $43.20 per $100 in surrounding school districts.

The Appellate Division also rejected the District's argument that because it was the only district in Suffolk County in which a nuclear powered electrical generating station was located that it, and its residents, had been unconstitutionally discriminated against. The Court found that by its terms, the statute would apply to any school district in Suffolk County in which a nuclear powered generating station was located. Although not addressed

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1. Although the principle of comity generally prohibits federal court intervention when a state tax system is challenged, the principle does not prohibit an appeal to this Court where the appellants have exhausted their state court remedies. Fair Assessment in Real Estate v McNary, 454 US 100, 116, 70 L Ed 2d 271, 283, 102 S Ct 177.

in the decision appealed from, the record also shows that every other school district in the State of New York in which a nuclear powered electrical generating station is located has refund liability. This is due to the fact that New York Real Property Tax Law § 726 1. (c) imposes refund liability on all school districts for all tax refunds unless a specific tax act exempts the district from liability. The other school districts within New York State in which nuclear powered electrical generating stations are located have no such specific tax act exemption.

The District's argument that events which have occurred subsequent to the enactment of Chapter 1018 of the laws of 1983 render the law unconstitutional is disingenuous for several reasons. First of all, there is no requirement that a legislature, in enacting a statute, foresee every eventuality or achieve mathematical precision in the allocation of taxes. *Trump v Chu* 65 N.Y.2d 20, 489 N.Y.S. 2d 455 (1985) *appeal dismissed* 474 U.S. 915; *Allied Stores v Bowers* 358 U.S. 522, 79 S.Ct. 437 (1959).

Furthermore, the District has not pointed out that both §1020 - q- 3 of the New York Public Authorities Law and subsequent interpretations of that statute by the courts of New York State have held that the law requires Payments In Lieu Of Taxes (hereinafter PILOT) to be paid to the District. The PILOT payments, which began at 100% of the taxes and assessments that would have been paid to the District had Shoreham not been acquired by the State, are to be phased down by 10% of the previous year's payment until such payments reach the level of taxes and assessments which would have been levied on the plant in a non operative state. Once PILOT payments reach the level of taxes and assessments which would have been levied on the plant in a non-operative state, such PILOT payments will continue at that level in perpetuity. *Long Island Power Authority v Shoreham Wading River Cent. Sch. Dist.* 88 N.Y.2d 503, 647

N.Y.S. 2d 135, 670 N.E.2d 419 (1996). Such a statutory plan, does not create the prescription for disaster put forth by the District in its arguments against the constitutionality of Section 3 of the Suffolk County Tax Act.

The District argues that those who benefited most from the excessive school taxes collected on the Shoreham plant may no longer reside within the district and, therefore may no longer be part of the class of taxpayers subjected to refund liability. This argument must be rejected because the District does not propose a solution to this perceived inequity, but rather proposes to burden those who never resided within the District or received the benefits of the excessive school taxes paid on the Shoreham plant with the responsibility for refunding those taxes.

CONCLUSION

Because the challenged statute is rationally related to a legitimate state purpose and because there has been no showing that the statute violates the Equal Protection Clause of the Constitution, the writ for certiorari should be denied.

Dated: Mineola, New York
June 12, 1997

RESPECTFULLY SUBMITTED:

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